



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, MNDC

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. The tenants also seek a monetary order for money owed or compensation for damage or loss, the return of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?
Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on September 1, 2013 on a fixed term tenancy ending for 12 months ending on August 31, 2014 as shown by the submitted copy of the signed tenancy agreement. Both parties confirmed that the tenancy ended on February 28, 2014. The monthly rent was \$3,000.00 payable on the 1st of each month and a security deposit of \$1,500.00 was paid on August 11, 2013.

The tenants state that no condition inspection report for the move-in or the move-out were completed. The landlord disputes this stating that a condition inspection report for the move-in was completed on September 5, 2013 and a move-out report was

completed on February 28, 2014. The landlord has submitted a copy of which that shows that both parties signed the inspection reports for the move-in and the move-out.

The landlord seeks a monetary claim of \$4,660.00 which consists of loss of rental income for two months rent as monthly rent is \$2,330.00. The landlord states that the tenants ended the fixed term tenancy prematurely on February 28, 2014 before the end of the term on August 31, 2014. The landlord is only seeking the loss of two months rental income as the rental was re-rented on May 1, 2014. The tenant disputes this claim stating that the tenancy ended as a result of the city of Vancouver order dated December 10, 2013 that the "attic has been developed into living/sleeping quarters with a 3 piece bathroom. There is a keyed lock at the bottom of the stairs. There is no handrail or guardrail at the top of the stairs. There is inadequate headroom in the bathroom, the shower and in front of the toilet. **Cease occupying the attic as sleeping quarters.**" The tenants argue that by complying with the order that this tenancy is ended as it was advertised as a 4 bedroom and is no longer such. The tenant has referred to the landlord's evidence which shows that the landlord knowingly advertised the rental as "4 Bedroom Character Home ideal for Couples +3" and that it was reposted on February 3, 2014 as, "3 Bedroom Character Home ideal for couple +2". The landlord argues that the attic room could still be used as a den. The tenants argue that by complying with the government order of the city of Vancouver that the rental of the 4 bedroom unit was now frustrated and that the tenancy was at an end. Upon being notified that the tenants gave notice to the landlord to end the tenancy on February 28, 2014.

The tenants seek a monetary claim of \$7,647.00 for money owed or compensation for loss which consists of \$5,757.00 as rent owed from the date of the frustration of the contract, \$1,125.00 for the return of the security deposit portion not yet returned by the landlord, \$450.00 for cleaning costs from the beginning of the tenancy, \$180.00 for excessive overpayment of utilities and \$85.00 for the cost of bank charges for cancelling the post dated cheques issued to the landlord.

The tenants seek compensation of \$5,757.00 owed as the signed tenancy agreement had to be ended. The landlord disputes this portion of the claim. The tenants state that as the rental unit was no longer a 4 bedroom unit as a result of the government order to cease occupying the rental unit, the tenants are entitled to compensation for the return of all of their rent from the date of end of the tenancy.

The tenants seek the return of the unreturned portion of the security deposit of \$1,125.00. Both parties confirmed the landlord returning \$375.00 to the 4th tenant of the rental.

The tenants seeks compensation of \$450.00 for cleaning of the rental unit from the beginning of the tenancy. The tenants state that there were issues at the beginning of the tenancy with cleanliness. The tenants have provided copies of photographs which show the state of the rental. The tenants have provided copies of an email chain of a conversation regarding the condition of the rental unit at the beginning of the tenancy. The landlord states that she agrees that there were cleanliness issues and addressed them at the beginning of the tenancy with the tenants. The landlord states that an agreement was made that the tenant's would not have to clean the rental unit, but only had to leave it in a condition the same as at the beginning of the tenancy agreement. Both parties confirmed that the landlord would initiate a professional cleaning charge as part of the end of tenancy for new tenants after these tenants vacated the rental unit. The tenants argue that they accepted this agreement, but that at the end of tenancy had to clean as one of the tenants suffers from strong allergies and that dirt could not be tolerated. The tenants state that the compensation of \$450.00 is based upon \$15.00 per hour for an estimated 40 hours of cleaning. The tenants state that no costs were incurred, except for their own time in cleaning.

The tenants state that \$180.00 in excessive utilities were charged to the tenants during the period September 2013 to February 2014 for 6 months. The tenants state that as per the signed tenancy agreement that each tenant is responsible for paying an equal share, "electricity and Terasen gas not included. Total bill will be divided by # of people in all 3 suties and averaged accordingly. Reconciliation will be at end of term. Both parties confirmed that they understood this to be for the end of the fixed term tenancy ending on August 31, 2014. The landlord states that as the term has not yet expired and the bills for utilities have not yet been received, she is unable to determine what the utilities cost would be for each tenant.

The tenants state that at the end of the tenancy the tenants requested that the landlord return the post dated cheques to the tenants. The landlord confirmed in her direct testimony that the post dated cheques were not returned to the tenants after being requested to do so. The tenants have provided copies of bank statements which show that a \$12.50, \$17.50 and \$30.00 fees were incurred for the cancellation of the post dated cheques, totalling, \$85.00.

Analysis

I accept the evidence of both parties and find based upon the evidence submitted that the tenancy was ended as a result of the issuance of the order from the city of Vancouver to cease occupying the attic as a fourth bedroom. I find that the tenancy was no longer a 4 bedroom unit but instead a 3 bedroom unit. This is shown by the

landlord's evidence in which the disputed rental was re-advertised as a 3 bedroom instead of 4. The landlord's monetary claim for loss of rental income is dismissed.

As for the tenant's claim for \$5,757.00 in compensation for the frustration of the contract (tenancy agreement), I find that the tenants have failed to provide sufficient evidence to satisfy me that any losses were incurred. Section 7 of the Residential Tenancy Act states,

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The tenants gave notice January 30, 2014 to vacate the rental unit by March 1, 2014. The tenants in complying with a government order to cease use of the attic space ended the tenancy as this was no longer as listed for rent a 4 bedroom unit. The tenants suffered no loss of use and paid no expenses as a result of the government order. The tenants instead gave notice to vacate and ended the tenancy on February 28, 2014. The tenants suffered no losses. This portion of the tenant's application is dismissed.

I find that as the landlord has been unsuccessful in establishing a claim for loss of rental and that no other reasons to retain the security deposit have been put forth that the tenant's are entitled to the return of the unreturned portion of \$1,125.00. The tenant's have been successful in this portion of their application.

The tenant's claim for recovery of cleaning costs of \$450.00 has not been established. Both parties confirmed that at the beginning of the tenancy an agreement was made as the condition of the rental unit required cleaning. The parties agreed that the tenants would leave the rental unit in a condition equivalent to how it was received. The tenants state that as one of the tenants could not tolerate the uncleanliness, the tenants changed the agreement by cleaning the rental unit. As such, I find that the tenant's are not entitled to compensation for cleaning. Both parties were clear that an agreement was in place because of the condition of the rental unit at the beginning of the tenancy and the tenant's changed that agreement without the landlord's consent. This portion of the tenant's claim is dismissed.

On the tenant's claim of excessive charges for utilities costs, I find that the tenant has failed to provide sufficient evidence to satisfy me of this claim. The tenants have failed to provide sufficient evidence to satisfy me of this claim as no invoices/bill have yet been received to determine the actual costs. On this basis, this portion of the tenant's application, I find is premature in the circumstances and dismiss with leave to reapply.

I accept the undisputed testimony of the tenants and find that after the end of the tenancy, the landlord failed to return the post dated rent cheques after being requested to do so and thus incurred a total, \$85.00 stop payment fees. The tenants have established a claim for recovery of the combined \$85.00 in stop payments fees as shown by the submitted copies of the bank statements.

The tenant's have established a total monetary claim of \$1,210.00 consisting of the remaining unreturned portion of the security deposit of \$1,125.00 and \$85.00 for the cost of stop payment fees. The tenants having been successful are entitled to recovery of the \$100.00 filing fee. The tenants are granted a monetary order for \$1,310.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord's monetary claim is dismissed.

The landlord's request to retain the security deposit is dismissed.

The tenants are granted a monetary order for \$1,310.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 04, 2014

Residential Tenancy Branch

